

JUDGE SCHEINDLIN

07 CV 10345

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiff
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120
Nicholas P. Giuliano (NG 1060)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

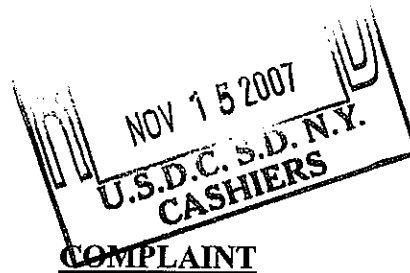
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MERCHANT CASH & CAPITAL LLC,

Plaintiff,

- against-

FRIED OKRA, INC., d/b/a THOROUGHBREDS
RESTAURANT, THOROUGHBREDS
RESTAURANT LP, and TONY BENNETT,

Defendants.
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Plaintiff, Merchant Cash & Capital, LLC, by its attorneys, Bennett, Giuliano, McDonnell
& Perrone, LLP, alleges as follows:

1. Plaintiff, Merchant Cash & Capital, LLC ("MCC"), is a Delaware limited liability company with its principal place of business at 450 Park Avenue South, 11th Floor, New York, New York.

2. Defendant Fried Okra, Inc., doing business as Thoroughbreds Restaurant ("Thoroughbreds"), is a corporation or limited liability company duly organized under the laws of one of the states of the United States, other than Delaware or New York, with its principal place of business in Myrtle Beach, South Carolina.

3. Defendant Thoroughbreds Restaurant, LP. ("Thoroughbreds"), is a corporation or limited liability company duly organized under the laws of one of the states of the United States,

other than Delaware or New York, with its principal place of business in Myrtle Beach, South Carolina.

4. Defendant, Tony Bennett, is the owner of Thoroughbreds and is a citizen and resident of the State of South Carolina.

5. The amount in controversy exceeds \$75,000 exclusive of interest and costs.

6. This Court has personal jurisdiction over defendants Thoroughbreds and Bennett based on the forum selection clause in the contract, which is the basis of this Complaint, and based on their transaction of business or doing business in the State of New York pursuant to C.P.L.R. § § 301 and 302.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT

7. MCC repeats and realleges each and every allegation contained in paragraphs 1 through 7 of this Complaint as though fully set forth herein.

8. On or about September 12, 2006, Thoroughbreds entered into a contract (the "Contract") with MCC wherein Thoroughbreds sold \$202,500 worth of future receivables to MCC for \$150,000.

9. Several times after September 12, 2006, Thoroughbreds sold additional future receivables worth \$607,500 to MCC for \$450,000.

10. To ensure that the future receivables were paid to MCC, Thoroughbreds agreed to process all of its credit card transactions through a processor approved by MCC.

11. The name of MCC's approved processor was Cynergy Data.

12. Under the Contract, thirty-five percent (35%) of Thoroughbreds' Visa and Mastercard credit card transactions were to be paid by Cynergy Data directly to MCC until the total amount paid to MCC amounted to \$810,062.

13. Prior to MCC receiving full payment of the above mentioned receivables, Thoroughbreds stopped using Cynergy Data as its credit card processor.

14. Prior to MCC receiving full payment of the above mentioned receivables, Thoroughbreds used an unapproved credit card processor in direct violation of the Contract terms.

15. To date, defendant owes plaintiff \$233,737.96.

16. Defendants have not paid plaintiff any of the \$233,737.96 owed.

17. The Contract between Thoroughbreds and MCC requires Thoroughbreds to pay MCC's legal fees in the event of a breach of contract.

SECOND CAUSE OF ACTION
BREACH OF PERSONAL GUARANTY

18. MCC repeats and realleges each and every allegation contained in paragraphs 1 through 17 of this Complaint as though fully set forth herein.

19. The Contract is personally guaranteed by defendant Bennett.

20. By reason of the foregoing, MCC has been caused to sustain damages in the amount of \$233,737.96 plus interest, costs, disbursements, and attorneys' fees.

WHEREFORE, Plaintiff demands as follows:

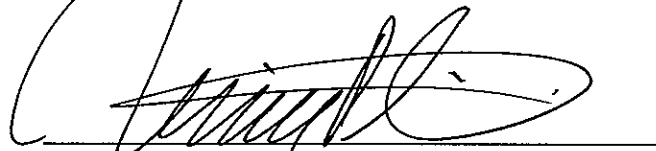
1. That judgment be entered in favor of plaintiff against defendants on each cause of action in the amount of \$233,737.96.

2. That plaintiff be awarded interest, costs, disbursements, and attorneys' fees; and

3. That the plaintiff have such other, further, and different relief as may be just, proper, and equitable.

Dated: New York, New York
November 9, 2007

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiff
MERCHANT CASH & CAPITAL, LLC

A large, stylized handwritten signature in black ink, appearing to read 'Giuliano', is written over a horizontal line.

Nicholas P. Giuliano
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120

TO: Fried Okra, Inc.
Thoroughbreds Restaurant, LP
Tony Bennett
9706 N Kings Hwy.
Myrtle Beach, SC 29572